No. 465

WAYNE APARTMENTS, Inc.,
LAREDO APARTMENTS, Inc.,
YORK APARTMENTS, Inc.,
9225 BROADSTREET CORPORATION,
NORTHWEST APARTMENTS, Inc.,
Michigan Corporations,
Petitioners,

vs.

MICHIGAN UNEMPLOYMENT COMPENSATION
COMMISSION,

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Supreme Court of the United States

OCTOBER TERM, 1943

No. .....

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YORK APARTMENTS, Inc.,
9225 BROADSTREET CORPORATION,
NORTHWEST APARTMENTS, Inc.,
Michigan Corporations,
Petitioners,

vs.

MICHIGAN UNEMPLOYMENT COMPENSATION COMMISSION,
Respondent.

Petition for Writ of Certiorari to the Supreme Court of the State of Michigan and Brief in Support Thereof

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PETITION FOR WRIT OF CERTIORARI

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioners, pray this court for the issuance of a writ of certiorari to the Supreme Court of Michigan

to review a final order of that court entered the 7th day of September 1943, denying rehearing of its judgment entered June 7, 1943.

BASIS OF JURISDICTION

Jurisdiction of this court is invoked because the opinion and decision of the Supreme Court of the State of Michigan denies petitioners their constitutional protection of due process under the Fourteenth amendment of the Federal Constitution.

QUESTION PRESENTED

Involved herein is the constitutionality of the so-called "affiliate" clause of Section 41 of the Michigan Unemployment Compensation Act (Act No. 1, Section 41 (3) Public Acts of 1936, Ex. Session as amended by Act No. 347 Public Acts of 1937 and which reads:

> "Any employing unit which, together with one or more other employing units, is owned or controlled (by legally enforceable means or otherwise directly or indirectly by the same interests, or which owns or controls one or more other employing units (by legally enforceable means or otherwise) and which, if treated as a single unit with such other employing units or interests, or both, would be an employer under paragraph (one) of this section."

The attack on the so-called "affiliate" clause as being repugnant to the Fourteenth Amendment to the Federal Constitution was asserted in petitioners' petition for Certiorari filed in the Circuit Court for the County of Wayne (Detroit) (R. page 5), wherein said clause was

condemned as unconstitutional, and again in the Supreme Court of Michigan where on reversal its constitutionality was sustained (R. pages 64-69).

SUMMARY STATEMENT OF MATTER INVOLVED

On September 5, 1939, one, Ruby Evick, filed a claim with the Michigan Unemployment Compensation Commission for unemployment benefits. At a hearing before the referee, the following undisputed facts were established. The claimant was employed by the Northwest Apartments, Inc., from August 15th, 1938 to September 15, 1938; by the Wayne Apartments, Inc., from September 15, 1938 to October 17, 1938; by the 9225 Broadstreet Corporation from October 17, 1938 to March 1, 1939.

George Levey actively managed the Wayne Apartments, Inc., the 9225 Broadstreet Apartments, Inc., the Laredo Apartments, Inc., the York Apartments, Inc., and the Northwest Apartments, Inc. During the calendar years 1938 and 1939, the above-named corporations, if treated as a single unit for the purpose of counting the number of individuals in employment, had in employment eight or more individuals in each of twenty weeks within each of the said calendar years. Each corporation taken individually had less than eight individuals in employment at all times. The corporations by whom claimant was employed together did not employ eight individuals.

Each of the above named corporations was incorporated under the provisions of the Michigan General Corporations Act and in accordance with the Exempt Transactions Law, so-called, which law limits the number of

incorporators to 25 and requires each incorporator to sign the Articles of incorporation. Each corporation owns and operates one apartment house, except the Northwest Apartments, Inc., which has three.

The Board of Directors of each of said corporations is the same, being composed of George Levey, President; Mrs. George Levey, and Joseph G. Aller, Secretary and Treasurer. George Levey actively manages the business of each corporation.

The corporate structure of the said corporations is as follows:

Corporation	"A" Stock	"B" Stock	Date
Wayne Apartments, Inc.	$35,000	$1,000	Oct. 14, 1936
9225 Broadstreet Corp.	30,000	500	Jan. 5, 1937
Laredo Apartments, Inc.	35,000	500	March 30, 1937
York Apartments, Inc.	37,000	500	Sept. 24, 1937
Northwest Apts., Inc.	42,000	500	April 26, 1938

In each corporation the stockholders are divided into two classes, "A" stock and "B" stock. The "A" stock is common stock and in each instance carries no voting rights. The "B" stock is the voting stock in each corporation. All of the B stock in each corporation is owned by George Levey. The common stockholders in each corporation are different individuals.

These corporations were not formed as separate enterprises for the purpose of evading the Michigan Unemployment Compensation Act. The profits, if any, arising from the corporate business are divided among the stockholders in the form of dividends.

Finding that under the 'affiliate clause' the corporations collectively are a single employing unit, employing more than eight individuals, (even though each, individ-

ually, employes less than eight) the referee adjudged petitioners subject to the Michigan Unemployment Compensation Law. The circuit Court for Wayne County, reversed this finding, holding the 'affiliate clause' repugnant to the Fourteenth Amendment to the Federal Constitution. This ruling was reversed by the Supreme Court of Michigan sustaining its constitutionality, from which decision petitioners seek review by this court.

REASONS RELIED ON FOR THE ALLOWANCE

1. The Supreme Court of Michigan has decided a Federal question, (the constitutionality of the affiliate clause of the Michigan Unemployment Compensation Act), in a way conflicting with the determination of this Court in denying certiorari in

> *Independent Gasoline Company v. Bureau of Unemployment Compensation*, 190 Georgia 613; certiorari denied 61 S. Ct. 175,

wherein an affiliation clause substantially the same as that in Michigan was held by the Supreme Court of Georgia to be repugnant to the Fourteenth Amendment of the Federal Constitution.

2. The Supreme Court of the United States in Retirement Board vs. Alton Railroad Company, 295 U. S. 330-360, concluded

> "The provisions of the Act which disregard the private and separate ownership of the several respondents, treat them all as a single employer and pool all their assets regardless of their individual obligations and the varying conditions found in their respective enterprises, cannot be justified as consistent with due process."

The principle involved in the *Alton* case, *supra,* seems to use to be substantially the same as that involved in the affiliate clause at bar, and if so, the decision of the Supreme Court of the State of Michigan conflicts with the determination of this Court.

3. If this Court has not settled the question as to the constitutionality of the affiliate clause, then, an important question of Federal Law remains, which question has not been, but should be settled by this Court in view of the conflicting decisions of various State Courts:

Benner-Coryell Lumber Co., Inc., vs. Indiana Unemployment Compensation Board, 29 Northeastern 2d, 776; certiorari denied by the Supreme Court of the United States, 312 U. S. 698.

Independent Gasoline Company vs. Bureau of Unemployment Compensation, 190 Georgia 613; certiorari denied 61 S. Ct. 175.

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Wiley Motors Inc., vs. Unemployment Compensation Commission of New Jersey 31 Atl. (2) 39.

Kellogg vs. Murphy 164 S. W. (2d) 285 (Mo.).
Godsol vs. Unemployment Compensation Comm. 302 Mich. 652.

There is appended hereto a schedule of the applicable sections of the Michigan Unemployment Compensation Act, (Act. 1, Public Acts 1936, Ex. Sess, as amended by Act 347 of the Pub. Acts of 1937), and Opinions of the Trial Court and Supreme Court of Michigan. (see Appendix).

A transcript of the Record in this case including the proceedings in the Supreme Court of Michigan is furnished herewith in accordance with Rule 38 of this Court.

Wherefore your petitioners respectfully pray that this Honorable Court be pleased to grant a Writ of Certiorari directed to the Supreme Court of the State of Michigan, requiring that Court to certify a full and complete transcript of Record in the above entitled cause to this Honorable Court for its review and determination.

And your petitioners will ever pray.

Alan J. Stone,
Joseph G. Aller,
Samuel H. Rubin,
Attorneys for Petitioners.

CERTIFICATE

We hereby certify that we are the attorneys for the petitioners herein, that the allegations of fact contained in said petition are true and that said petition in our opinion is well founded in Law as well as in fact.

Alan J. Stone,
Joseph G. Aller,
Samuel H. Rubin.